IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Michael Christopher MARTIN, et al.	Conf. No. 4861
Appln. No.	: 09/846,568	Group Art unit: 2154
Filed	: May 1, 2001	Examiner: J. Chang
For	: **METHOD FOR ADAPTING AN INTERNET WEB SERVER TO SHORT-TERM CHANGES IN DEMAND**	

SUPPLEMENTAL REPLY BRIEF UNDER 37 C.F.R. 41.41(a)(1)

Commissioner for Patents
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Randolph Building
401 Dulany Street
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Sir:

This Supplemental Reply Brief is in response to the second Examiner's Answer dated July 7, 2008, the period for reply extending until September 8, 2008 (September 7, 2008 being a Sunday).

The Examiner maintains the grounds of rejection advanced in the final rejection of claims 1-20, and provides arguments in support thereof in response to Appellant's Reply Brief filed on April 21, 2008.

Appellant notes this Supplemental Reply Brief is being filed under 37 C.F.R. 41.41(a)(1) and 41.43(b), and is directed to the arguments presented in the second Examiner's Answer, and therefore must be entered unless the final rejection is withdrawn in response to the instant Supplemental Reply Brief. With regard to this Supplemental Reply Brief, Appellant notes it is addressing points made in the second Examiner's Answer and not repeating the arguments set forth in the Appeal Brief.

POINTS OF ARGUMENT

First Issue

On page 3 of the second Examiner's Answer, the Examiner finally correctly lists the claims which are rejected as obvious over SARUKKAI and GLANCE, i.e., claims 1, 4-12, 15, 16, 18 and 19.

Second Issue

On pages 3-5 of the second Examiner's Answer, the Examiner responds to Appellant's arguments regarding the obviousness rejection of claim 1 over SARUKKAI and GLANCE asserting the following:

(a) associating session tracking objects with browsers that access a web server, wherein the session tracking objects include identifications of web pages requested by the browsers "is notoriously well known and obvious to one skilled in the art."

(b) that Newton's Telecom Dictionary defines a log file thereby providing evidence to render Appellant's claims unpatentable;

(c) that SARUKKAI does in fact teach the identifications of web pages requested by the browsers because SARUKKAI teaches that each web document has a unique URL address; and

(d) that GLANCE "explicitly discloses session tracking objects (14, fig. 1) that associates with the browsers (col. 2, lines 4-5), wherein the session tracking objects include identifications of web pages

requested by the browsers (col. 5, lines 43-55) ..."

Appellant disagrees with each assertion noted above for the reasons presented in detail below.

Assertion (a)

With regard to Examiner's above-noted assertion (a), Appellant submits that the Examiner is apparently taking inconsistent positions and/or presenting new arguments in the second Examiner's Answer.

The position that the noted claim feature "notoriously well known and obvious to one skilled in the art" is inconsistent because the Examiner has stated on the record (see pages 10-13 of the Examiner's Answer dated February 22, 2008) that the combination of SARUKKAI and GLANCE, under a broadest reasonable interpretation, teach this feature. If this feature is so well know, why is there no prior art on the record demonstrating this alleged fact?

The Examiner's position in assertion (a) also appears to be a new argument because the assertion that associating session tracking objects with browsers that access a web server, wherein the session tracking objects include identifications of web pages requested by the browsers "is notoriously well known and obvious to one skilled in the art" was not presented in the Final Rejection, much less, in the Examiner's Answer mailed on February 20, 2008.

Assertion (b)

With regard to Examiner's above-noted assertion (b), Appellant submits that the Examiner is apparently presenting new arguments in the second Examiner's Answer. The Examiner appears to cite for the first time a definition of Newton's Telecom Dictionary. What ever the merit of this definition, it is improper to present new arguments in an Examiner's Answer. Furthermore, it is not apparent why this new argument is being presented. The discussion of the definition of "log file" does not *per se* squarely address Appellant's argument that neither SARUKKAI and GLANCE teach associating session tracking objects with browsers that access a web server, wherein the session tracking objects include identifications of web pages requested by the browsers.

Assertion (c)

With regard to Examiner's above-noted assertion (c), Appellant submits that the Examiner is again apparently taking inconsistent positions and/or presenting new arguments in the second Examiner's Answer.

The position that SARUKKAI does in fact teach the identifications of web pages requested by the browsers because SARUKKAI teaches that each web document has a unique URL address is inconsistent and contrary because the Examiner has acknowledged on the record (see bottom of page 4 of the Examiner's Answer dated February 22, 2008) that SARUKKAI "does not specifically disclose identifications of web pages" and that GLANCE, not

SARUKKAI, teaches this feature.

Above-noted assertion (c) also appears to be a new argument because the Examiner has previously relied specifically upon GLANCE to teach this feature at col. 1, lines 14-16, col. 2, lines 43-45, and col. 3, lines 10-58 (see text bridging pages 4 and 5 of the Examiner's Answer dated February 22, 2008). Certainly, it is unfair and improper for the Examiner to shift positions at this point in the prosecution - depriving Appellant with a full and fair opportunity to consider and address the merits of the Examiner's arguments. For this reason alone, reversal and remand to the Examiner should be required.

Assertion (d)

With regard to Examiner's above-noted assertion (d), Appellant acknowledges that the Examiner maintains that GLANCE "specifically discloses session tracking objects (14, fig. 1) that associates with the browsers (col. 2, lines 4-5), wherein the session tracking objects include identifications of web pages requested by the browsers (col. 5, lines 43-55). However, the Examiner never acknowledges Appellant's argument in the Reply Brief that that this argument was not asserted in the Final rejection. Nor has the Examiner explained how the value module 14 of GLANCE discloses or suggests associating session tracking objects with browsers that access a web server, wherein the session tracking objects include identifications of web pages requested by the browsers. Quoting certain sections of GLANCE, as the

Examiner does on page 5 of the instant second Examiner's Answer, without explaining how such language teaches the actual claim features is insufficient to demonstrate unpatentability.

Appellant again asserts that GLANCE merely discloses a system and method of caching based on a recommender system. The disclosed system employees a democratic caching generally shown by reference numeral 10. A recommender system 16 provides value information pertaining to items to be stored in cache 24 based on user input (col. 4, liens 43-53) that includes implicit site recommendations (col. 5, lines 24-55) and explicit URL recommendations (col. 5, lines 65 et seq.). Thus, GLANCE, like SARUKKAI, simply does not disclose or suggest associating session tracking objects with browsers that access a web server, wherein the session tracking objects include identifications of web pages requested by the browsers. Nor does GLANCE disclose or suggest determining caching priorities for the server by analyzing the identifications of web pages requested by the browsers.

Third Issue

Appellant also notes that absent from the second Examiner's Answer is any discussion whatsoever with regard to either SARUKKAI and GLANCE disclosing or suggesting determine caching priorities for the server by analyzing the identifications of web pages requested by the browsers. The fact that GLANCE teaches to utilize a module 14 to analyze the log of client accesses to

the Internet 30 web sites and uses ranking as a measure of the value of a site and/or any URL associated with the site is simply not the same as determining caching priorities for the server by analyzing the identifications of web pages requested by the browsers. This argument has never been properly or fully addressed by the Examiner.

Appellant notes, in particular, that the Examiner never addresses Appellant's argument that GLANCE does not determine caching priorities for the server by analyzing the identifications of web pages requested by the browsers. As noted in the Reply Brief, utilizing a module 14 to analyze the log of client accesses to the Internet 30 web sites and using ranking as a measure of the value of a site and/or any URL associated with the site is simply not the same as determining caching priorities for the server by analyzing the identifications of web pages requested by the browsers.

Fourth Issue

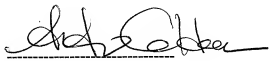
Finally, Appellant also submits that the Examiner has not, in the instant second Examiner's Answer, squarely addressed Appellant's argument that the "broadest reasonable interpretation" standard must be one that "would be understood by one of ordinary skill in the art, taking into consideration the description of the applicant's specification. *In re Morris*, 127 F.3D 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997)". See page 3 of the previously cited non-precedential decision *Ex parte HADDAD*. As the Examiner will note

from page 5, lines 3-16 of the instant specification, session tracking objects constitute information about the requests for web pages by the browsers and this information identifies each of the browsers.

CONCLUSION

Accordingly, in view of the above-noted arguments (as well as those already of record), the Board is respectfully requested to reverse the Examiner's decision to finally reject claims 1-20 under 35 U.S.C. §103. Furthermore, the application should be remanded to the Examiner for withdrawal of the rejections over the applied documents and an early allowance of all claims on appeal should be provided. The Commissioner is hereby authorized to charge any fees necessary for consideration of this paper to deposit account No. 09-0457.

Respectfully submitted,
Michael Christopher MARTIN, et al.



September 8, 2008
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